facts which are not open to dispute. On this ground also I would dismiss the appeal.

Appeal dismissed.

Solicitors: *Murphy & Dunbar; Hilborne & Co.*

UNITED INVESTMENT & FINANCE LTD. v. ABDUL RAHMAN & ANOR.

[O.C.J. (Winslow J.) February 14, 1966]

[Singapore — Suit No. 1737 of 1963]

Hire-purchase — Whether transaction a hire-purchase or a loan on security of vehicle — Moneylenders Ordinance, 1959 — Bills of Sale Ordinance (Cap. 22)

The facts as found at the trial were as follows:— The first defendant bought a motor-cycle from the Universal Service Agency of which the second defendant was the managing partner, for $1,366. The first defendant paid the sum of $341 as deposit and the balance of $1,025 was paid to the second defendant by the plaintiffs by cheque. A hire-purchase agreement was entered into between the plaintiffs and the first defendant and the second defendant signed the agreement in his personal capacity as guarantor. Although the second defendant was a director of the plaintiffs, he did not act as agent of the plaintiffs in the transaction. The plaintiffs claimed the balance of hire-rentals and delivery of the motor cycle or its value.

Held: (1) the sum of $1,025 paid to the second defendant by the plaintiffs was in substance a loan to the first defendant in discharge of the balance due by him to the second defendants for the motor cycle which he had bought on making the initial deposit with the second defendant;

(2) the plaintiffs were never the owners of the motor-cycle and must therefore fail in their action, the agreement being unenforceable as the plaintiffs were not licensed moneylenders and as the agreement had not been registered as a bill of sale.

Cases referred to:—

(1) *Trade Promotion Trust Ltd.* v. *Young* (1940), 84 Sol.J. 646.

(2) *Polsky* v. *S. and A. Services* [1951] 1 All E.R. 185.

CIVIL SUIT.

John Tan Chor-Yong for the plaintiffs.

J. Pillai for the second defendants.

Cur. Adv. Vult.

Winslow J.: The plaintiffs claim the sum of $430.40, being arrears of hire rentals due from the first defendant for 8 months commencing 2nd November, 1962 in respect of the hire to the latter of a Triumph motor-cycle No. J.B. 9581 (hereinafter referred to as "the vehicle") under a hire-purchase agreement (hereinafter referred to as "the agreement") dated 2nd June, 1962 and also ask for an order for delivery up of the vehicle or its value, and for damages for wrongful detention. The second defendant has been joined as a defendant as the guarantor of the first defendant.

The first defendant neither entered an appearance nor filed a defence although he did appear in court on the first day of the hearing, i.e. 27th July, 1965. Hearing of the case was completed on 31st January, 1966 but the first defendant was absent on that date.

The short point which I have to decide is whether the agreement is a genuine hire-purchase agreement or merely a device to provide financial accommodation in the form of a money loan disguised under the cloak of a hire-purchase agreement. If the true nature and intent of the transaction concerned is found to be a loan on the security of the vehicle then the provisions of the Moneylenders Ordinance (No. 58 of 1959) and the Bills of Sale Ordinance (Cap. 22) would have been contravened since the plaintiffs are not licensed moneylenders nor has it ever been suggested that there was any registration of the agreement as a bill of sale.

These defences have, *inter alia*, been raised by the second defendant and I now propose to analyse the evidence, in order to determine the true nature of the transaction, as follows:—

(a) The first defendant bought the vehicle which was valued at $1,366 from the Universal Service Agency (hereinafter referred to as "the agency"), of which the second defendant is the managing partner, on 2nd June, 1962 and, on the same day, paid a deposit of $341 to the agency in cash. The balance of $1,025 was furnished to the agency by the plaintiffs by cheque, a receipt for which was issued to them by the agency on 15th June, 1962.

(b) The agreement (page 2 of the agreed bundle) was also executed on 2nd June, 1962 as between the plaintiffs and the first defendant but it is not clear from the evidence whether it preceded the sale by the agency to the first defendant referred to above. It is significant that in paragraph 3 of the declaration at the foot of the hire-purchase proposal form of the same date the first defendant declared that he recognised that the supplier of the vehicle was not the agent of the plaintiffs in the proposed hire-purchase transaction.

(c) On the same day and at the foot of the agreement the second defendant, in his personal capacity, signed a guarantee form addressed to the plaintiffs for "the due and punctual payment by the hirer of all sums which may become due . . . and undertake to indemnify you against all loss and damage resulting to you from any breach by the hirer . . .".

(d) The first defendant obtained delivery of the vehicle from the agency on 2nd June, 1962 which was registered with the Registrar of Vehicles in his name on the same day although it appears from the evidence that the plaintiffs held the registration book (with the consent of the first defendant) with which they occassionally parted when road tax became due and had to be paid by him. From the evidence it would appear that, despite certain precautions taken by the plaintiffs, the registration book is no longer with them and all efforts to seize the vehicle after June, 1963, when the first defendant was 8 months in arrears of payment, have failed. No one could explain how the registration book left the plaintiffs' office.

(e) The first defendant, who was present in court on the first day, made the illuminating revelation, when he applied for an adjournment (which was refused), that he had sold the vehicle.

(f) It should be noted that on 2nd June, 1962 the second defendant was a director of the plaintiffs as, in fact, he had been since they commenced business in February, 1962 and that cordial relations prevailed between the plaintiffs and the second defendant until 26th February, 1963 when the second defendant was informed in writing (AB9) that the plaintiffs "no longer wish to continue with the practice of allowing you to collect instalment payments on our behalf in respect of those agreements guaranteed by yourselves as from the date of this letter". Although this letter is addressed to Messrs. Universal Service Agency it is clear that it was intended for the second defendant in this personal capacity as guarantor.

(g) Both the plaintiffs and the second defendant therefore, who was not only the managing partner of the agency but also a founder director of the plaintiffs, stood to benefit by whatever arrangements existed between them with regard to the sale of the agency's motor-cycles and subsequent hire-purchase agreements executed by the plaintiffs with the second defendant's customers. These arrangements had existed from the commencement of the plaintiffs' business in February, 1962.

(h) There is no evidence of any kind to substantiate the fact that the second defendant was purporting to act as an agent of the plaintiffs when he concluded the sale with the first defendant or that he collected the initial deposit from the latter on behalf of the plaintiffs under any pre-existing arrangement between the agency and the plaintiffs. He categorically stated that he collected it as money due to the agency from the first defendant to whom he, on behalf of the agency, had sold the vehicle. It seems to me that if any such arrangement had, in fact, been in existence from February, 1962 it was up to the plaintiffs to prove it. Not only did the plaintiffs not prove it (or even attempt to prove it) but no attempt was made to shake the second defendant on this in cross-examination and I must, therefore, conclude that there was no prior arrangement that the plaintiffs would purchase each vehicle as and when a customer presented himself to the agency before the signing of any hire-purchase agreement.

(i) The mere fact that the second defendant was also a director of the plaintiffs does not necessarily postulate a finding that the second defendant, as managing partner of the agency, must have acted in the transaction with the first defendant as an agent of the plaintiffs.

(j) It may well be that the intention of the plaintiffs and the second defendant was, at inception, to create a binding arrangement between themselves whereby the second defendant was to act as agent for the plaintiffs in all such transactions. Undoubtedly, he was a director of the plaintiffs. Performing as he was the dual functions of company director as well as managing partner of the agency, it is impossible for me to conclude that he was, as to transactions with customers, acting in both capacities at the same time in the absence of any evidence of the arrangements between the plaintiffs and himself.

(k) In his sale to the first defendant he obviously must have acted as managing partner of the agency. In receiving the initial deposit he said he was acting for the agency and received it on its behalf. This has not been challenged. Moreover, although the plaintiffs' managing director (P.W.1) claimed that they had bought the vehicle from the second defendant there is nothing in the evidence to indicate that ownership of the vehicle had passed to the plaintiffs before the execution of the agreement. In fact the evidence points to a prior sale to the first defendant. The only way in which the plaintiffs could claim ownership was, therefore, by proof of purchase by them from the first defendant. Of this there was none.

Having made these findings it remains for me to consider the law. Had the plaintiffs purchased motor-cycles outright from the agency and then entered into hire-purchase agreements with customers introduced to them by the agency then the case would have fallen squarely within the scheme of cases such as *Trade Promotion Trust Ltd.* v. *Young.*[1] Such a scheme was held by Humphreys J. not to constitute a moneylending transaction.

In that case, under a binding agreement between the plaintiffs, who were a hire-purchase finance company, and the defendant, who was a house furnisher, the plaintiffs bought furniture from the defendant which they sold to members of the public on hire-purchase terms. Such members of the public were, under the agreement, required to be produced by the defendant who was also required, as agent of the company, to take a binding hire-purchase agreement signed by the customer concerned in respect of the furniture bought by the plaintiffs and for which they paid the defendant, on production of the signed hire-purchase agreement.

Humphreys J. held that the true position was that the plaintiffs, who were businessmen and not philanthropists, were not prepared to buy from the defendant and pay him for furniture which they did not require themselves and then to find that there was no one whom they could compel to take it on hire-purchase terms. They therefore insisted that, before they paid the defendant for any furniture, he should produce documents signed by his customer. His Lordship did not consider that that constituted a moneylending transaction.

The facts in the case before me can be distinguished.

It is clear that there was no outright purchase of the vehicle by the plaintiffs from the agency or, for that matter, from the second defendant or even from the first defendant prior to the agreement. The second defendant's evidence is to the effect that he sold the vehicle to the first defendant and received a sum of $341 in cash as a deposit with the agency. There was a balance of $1,025 which was paid to the agency by the plaintiffs. If this evidence is accepted, as I have accepted it, then the owner of the vehicle, at the time the agreement was executed was, in truth, the first defendant and not the plaintiffs as the agreement states.

I therefore, find that the sum of $1,025 paid to the agency by the plaintiffs was, in accordance with the real truth and substance of the matter, a loan to the first defendant in discharge of the balance due by him to the agency for the vehicle which he had bought on making the said initial deposit with the agency.

From the evidence adduced before me the

agency received the initial deposit of $341 from the first defendant at the time of the sale of the vehicle to him. The plaintiffs then purported to purchase the vehicle from the agency for $1,025 when, in fact, the property in the vehicle had already vested in the first defendant. The plaintiffs then entered a fictitious credit of $341 in the agreement in order to make it appear that the first defendant had paid that amount to the plaintiffs at the time of the execution of the agreement when this was obviously not true.

In view of my finding that the vehicle was, in fact, sold on 2nd June, 1962 by the agency to the first defendant, I do not think that it is open to me to find that the plaintiffs purchased the vehicle from the agency for $1,025 on the same date. I therefore, find that the first defendant was the owner of the vehicle at the time of the execution of the agreement and that there was no sale of the vehicle by the first defendant to the plaintiffs at any time. It follows that the plaintiffs were never the owners of the vehicle. All they did was to advance the sum of $1,025 to the agency on behalf of the first defendant after the latter had purchased the vehicle from the agency. A "hire charge" of $266.50, which was admitted by the plaintiffs to represent interest on this amount for two years, was included in the agreement. This was, in effect, interest on the loan of $1,025. The second defendant therefore, when he signed the guarantee form was, in effect, a surety for this loan.

As Lord Goddard C.J. said in *Polsky* v. *S. and A. Services.*[2]

"If the defendant had bought this car from a dealer, all these documents would have been completely in order and no question could have arisen as to the Bills of Sale Acts having any application to the transaction. What I have to decide is whether this transaction was in fact what it purported to be or whether it was in truth no more than a loan by the defendants of £400, with interest, on the security of the car. If the latter is the true view of the transaction, it is clear that the hire-purchase agreement was no more than an assurance of personal chattels by way of security for the payment of money, and accordingly, it is a bill of sale within the meaning of the Bills of Sale Act (1878) Amendment Act, 1882, section 3, and, being unregistered, it is void under section 8 of the Act. A considerable number of cases were cited to me on the point which may, I think, be conveniently divided into two lines of authority. There is, on the one hand, the class of case, of which *Yorkshire Railway Wagon Co.* v. *Maclure* and *British Railway Traffic & Electric Co.* v. *Kahn* are good examples, where the transaction in question has been held to be a genuine sale followed by a hire-purchase agreement, and, therefore, unaffected by the Bills of Sale Acts, and, on the other hand, there is the class, which includes *Re Watson, Ex. parte Official Receiver in Bankruptcy* and *Madell* v. *Thomas & Co.*, where the court has held, on facts not very dissimilar from those in the present case, that the real transaction was one of loan, and, therefore, it was avoided by reason of the Acts. There is no doubt, I think, as to the deciding principle. The court has to determine whether the transaction in question is a genuine sale by the original owner of the chattel to the person who is finding the money and a genuine re-letting by the latter to the original owner on hire-purchase terms, or whether the transaction, though taking that form, is nothing more than a loan of money on the security of the goods. It is perfectly clear from the judgments of Lord Esher M.R. in *Re Watson* and in *Madell* v. *Thomas & Co.* that that is the question which has to be determined. The court is not to look merely at the documents. It must discover what the real transaction was".

I have therefore, come to the conclusion that it would be wrong for me to hold that this case falls within that class of cases which have been held not to contravene legislation relating to moneylending and/or bills of sale.

I understand that there are several outstanding writs of a similar nature by the plaintiffs against other purchasers of vehicles and the second defendant as guarantor. My finding in this case is based on its own peculiar facts as adduced in evidence. If the truth indeed is that there was, in fact, a prior binding arrangement between the plaintiffs and the second defendant which the plaintiffs can prove (but have failed to do in the present case) it will be open to them to profit by their present unfortunate experience and to ensure that such evidence is led in which event they may be able to attain a different result.

The claim of the plaintiffs is accordingly dismissed as against both defendants.

I will now consider submissions on the question as to whether I should make any order as to costs.

Claim dismissed.

Solicitors: *J. Tan Chor-Yong & Co.; Pillai & Co.*

IN RE XY & CO.

[O.C.J. (Buttrose J.) February 18, 1966]

[Singapore — Case Stated No. 1 of 1963]

Income Tax Ordinance (Cap. 166), ss. 73, 76 and 84 — Notices of assessment against firm — Appeal to Board of Income Tax Review and High Court — Appeal disposed of — Additional assessment by Comptroller of Income Tax — Question at issue not decided in appeal from original assessment — Discovery of new facts — Onus of proof.

This was a case stated under section 82 of the Income Tax Ordinance by the Income Tax Board of Review for the opinion of the High Court. The Comptroller of Income Tax had issued a notice of assessment and notices of additional assessment in 1951 and arising from this additional assessment there had been an appeal to the Board of Income Tax Review and the High Court and the appeal was disposed of. One of the items not in dispute was the devaluation of the closing stock. In 1957 the Income Tax Department examined certain documents relating to the stock records of the firm, not previously tendered to the department, and as a result further additional assessments were raised on the firm, in respect of the devaluation of the closing stock. It was contended that as the original additional assessments had been dealt with on appeal, the Comptroller of Income